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June 27, 2007

BY E-MAIL and REGULAR MAIL

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**Re: Consultation on a Framework to Auction Spectrum in the 2 GHz
Range including Advanced Wireless Services Canada Gazette Notice
No. DGTP-002-07**

Dear Mr. St. Aubin:

Cogeco Cable Inc. ("Cogeco") is pleased to submit the attached reply comments in response to Canada Gazette Notices DGTP-002-07.

We thank you for the opportunity to provide these comments and remain available to answer any questions you may have regarding our submission.

Yours very truly,
Cogeco Cable Inc.

A handwritten signature in black ink, appearing to read "A. Spay", is written over a horizontal line.

Vice-President, Corporate Affairs

YM/Ide
encl.

Canada Gazette Notice No. DGTP-002-07

*Consultation on a Framework to Auction
Spectrum in the 2 GHz Range including
Advanced Wireless Services*

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Reply Comments
of
Cogeco Cable Inc.

27 June 2007

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1 Introduction

1. Cogeco Cable Inc. (“Cogeco”) is pleased to provide the following reply comments in response to submissions filed with Industry Canada concerning Canada Gazette Notice DGTP-002-07 *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services*.
2. Cogeco would note that any failure on its part to provide reply comments on another party’s comments filed in this process does not imply Cogeco’s agreement with said comments.
3. Cogeco notes at the outset that the only parties which have disagreed with the positions it has taken in this proceeding are the incumbent wireless carriers, namely Rogers Communications Inc. (Rogers), Telus Communications Company Inc. (Telus) and Bell Canada (Bell). While such arguments are not surprising, the incumbent wireless carriers have gone to considerable trouble to demonstrate to Industry Canada that the Canadian mobile wireless market is ‘highly’ or ‘vigorously’ competitive, that they are the proper custodians of any new spectrum to be auctioned, that they have incurred considerable expense in implementing wireless networks in Canada and as such, are recommending that Industry Canada run an auction free of any interventionist measures such as a spectrum set aside for new entrants, mandated roaming and mandated tower sharing and site access policies.
4. In addition to speaking to the issues raised in its comments, Cogeco will also address two additional issues discussed at great length by the incumbent wireless carriers - whether or not the Canadian wireless market is competitive and the issue of the cost of spectrum.

1.1 Mobile Wireless in Canada – Competitive or Not?

5. The incumbent wireless carriers have attempted to demonstrate that the mobile wireless market in Canada is ‘highly’ and ‘vigorously’ competitive. However, rather than let the argument rest there, they have gone further, arguing that the Canadian market - because of a number of characteristics - is at a point now in its development that it cannot support another facilities-based competitor in the market.
6. Telus states that entry of a fourth facilities-based carrier is not sustainable and points to its own acquisition of Clearnet and the ‘insolvency’ of Microcell Telecommunications Inc. as evidence that the Canadian market “may only support three facilities-based suppliers.”¹ They then ask rhetorically “How much lower can prices go? How many more services/features could be offered? Will the pace of new offerings and innovation be quicker?” They then conclude by stating that “There is simply no good evidence to suggest that there would be substantive changes in the consumer choices and market conditions that exist today,”²with the addition of new players in the wireless industry in Canada.
7. Rogers, in a similar vein, states that new entrants will be deterred from entering the market given its current state of competition, and further uses the Bureau of Competition Policy’s decision approving its purchase of Microcell Telecommunications as evidence that it is unlikely that there will be entry by a fourth national facilities-based carrier. Furthermore, they also state that entry is unlikely because the market will be “64% penetrated at launch date” and is characterized by “three experienced and competitive national facilities-based carriers, regional carriers, and MVNOs and resellers.”³

¹ “Submission by Telus Communications Company”, 25 May 2007, page 46.

² Ibid, Telus, page 46.

³ “Comments of Rogers Communications Inc. (Rogers)”, 25 May 2007, pages 40-41.

8. Bell Canada has made similar statements, stating that “The industry is competitive and the vast majority of its customers consider themselves well-served”⁴, implying, of course, that there is no need for further entry or competitive activity in the mobile wireless market.
9. Cogeco submits that such argumentation is, at a minimum, disingenuous. The incumbent wireless carriers are weaving duplicitous arguments with the sole intention of preserving their market position and to keep out a potential new competitor. While Bell Canada argues that “Facts, not myths, are needed to prove claims of inadequate competition”⁵, the incumbent carriers are veering precariously towards the creation of their own myths designed to lull Industry Canada into believing that the Canadian wireless market is sufficiently competitive, that it doesn’t need another competitor and all the spectrum that Industry Canada is making available rightly belongs to them.
10. Such arguments, Cogeco submits, have been addressed by a number of organizations, starting with the Telecommunications Policy Review Panel and followed by a number other organizations showing that the Canadian wireless market has a number of failings when compared to its peer countries around the world. As such, Cogeco urges Industry Canada to reject the arguments of the incumbent wireless carriers concerning the competitiveness of the Canadian market.
11. While Cogeco continues to subscribe to the belief that the Canadian mobile wireless market is not nearly competitive enough, the central question is not whether it is or it isn’t. Cogeco submits that the central question the Department needs to answer is whether or not Canadians will be better off with another entrant participating in the market. Cogeco submits they will as they will have more choices of service providers and furthermore, carriers will have more choices of potential business partners available to them to offer, in turn, wireless services to

⁴ Bell Canada, 25 May 2007, page 27.

⁵ Ibid, page 4.

their own customers as a reseller, Mobile Virtual Network Operator or through some other business arrangement.

1.2 Spectrum Cost for Incumbents

12. One of the principal arguments that the incumbent wireless carriers make is that, if Industry Canada were to provide for such things as a spectrum set-aside, or mandated roaming, or access to existing towers and cell sites, it would have the effect of providing discounted spectrum to a new entrant. They go on to argue that they themselves have incurred significant costs in spectrum and in network equipment and that none of the spectrum they have received over the years was 'free' and nor did they receive any assistance from Industry Canada in this regard.
13. Cogeco submits that such arguments are patently false. As is demonstrated in a report authored by Lemay-Yates Associates Inc. (LYA) filed by Videotron Ltée., Rogers and the then provincial incumbent local exchange carriers (ILECs) were granted spectrum following a comparative award process for the purposes of offering analogue cellular telephony services in late 1983. Twelve years later, additional spectrum was again granted to Rogers, the ILECs and two new competitors - Clearnet and Microcell Telecommunications Inc. - through another comparative process in 1995. Not all the available spectrum was awarded and in 2001, the remaining PCS spectrum was auctioned. Only one new entrant was successful in acquiring spectrum, but apparently could not acquire the necessary financing and its spectrum was later acquired by Bell Canada in 2005.
14. In both 1983 and 1995, the incumbent wireless carriers obtained significant spectrum resources for virtually nothing, allowing them the financial flexibility to construct Canada-wide wireless networks. While they did have to pay license fees to Industry Canada, Cogeco submits that such fees were significantly lower in monetary value than the price

paid for spectrum in later auctions. Furthermore, Industry Canada lifted the spectrum cap in 2004 allowing the Rogers purchase of Microcell to proceed. Such measures - the award of spectrum through a comparative process, minimal license fees and the lifting of the spectrum cap - all provided the incumbent wireless carriers with a considerable leg up in building and expanding their wireless businesses.

15. As such, Cogeco continues to recommend that the rules for the auction include measures such as a spectrum set-aside, mandated roaming and mandated tower and site sharing for any new entrant. Cogeco would submit that such measures are no different in effect than those provided the incumbent wireless carriers when they needed it the most - at the beginning of their build out of their wireless networks - and continued to receive years after they constructed their networks and as new spectrum became available.

1.3 Mandated Access to Support Structures and/or Tower Sites

16. In its comments, Cogeco argued that it was necessary for Industry Canada to dramatically improve its policies with respect to access to existing wireless towers and sites. Not only would mandated access to support structures and/or tower sites assist a new entrant gain a foothold in the market faster than otherwise, such a policy would address the concerns of municipal governments and building owners who are faced with criticisms in terms of lack of space, aesthetics and planning challenges in terms of where to locate such towers or sites.
17. Cogeco would note that Telus and Bell mentioned in their submissions that access to towers and support structures should not be mandated, but did not expand significantly on that statement. Telus, for example, mentions it only once in their submission as part of a list of regulatory interventions it feels would lead to uneconomic entry.⁶ Bell mentions

⁶ Telus Submission, page 33.

- the issue a couple of times, but again, as part of a list of measures they characterise as ‘restrictions on business’ or as conflicting with the intent and spirit of the Government of Canada’s Telecommunications Policy Direction.⁷
18. Rogers, on the other hand, has come out in support of policies which encourage the sharing of towers and wireless sites. “Tower sharing is an incentive for facilities construction and network expansion by making this important infrastructure available to new entrants. (...) By extending tower access to new entrants through a tower sharing policy, the Department can target its regulatory intervention in a manner that clearly addresses its policy objective ...”⁸
19. Given the lack of any serious objection to the issue of tower sharing and improved access to other support structures by Telus or Bell, and the support indicated by Rogers and many others that have filed comments in this process, Cogeco strongly recommends that Industry Canada accelerate its deliberations on a new tower and support structure sharing policy and, further, make such a policy part of the license conditions of wireless carriers.

1.4 Spectrum Set Aside

20. On the issue of a spectrum set-aside, all three of the incumbent wireless carriers have come out against such a measure. Rogers argues that there is no need for a set aside as the Canadian wireless market is already competitive enough. “Give the Bureau’s decision to allow the sector to contract from four carriers to three, and given its conclusion that the market would continue to be characterized by vigorous and effective competition after this consolidation, it would be inconsistent for the Department to now put in place regulatory mechanisms to encourage a

⁷ Bell Canada Submission, page 6 of Executive Summary and page 2 of Part 5.

⁸ Rogers Submission, page 58.

reversion to four carriers.”⁹ Basically, Rogers is saying there are enough players in the market, they are doing a good job so no new entry is necessary. Telus takes a similar line, declaring that “Even with a very high degree of regulatory intervention to create entrant advantage, prospects for sustainability for any such entrant are low.”¹⁰

21. Again, however, rather than let the argument rest there, both Rogers and Telus go further, attacking the intentions of potential bidders, accusing them of arguing for special conditions for the sole purpose of ‘hoarding’ spectrum. Rogers states clearly that if Industry Canada were to have a spectrum set-aside, “it would also inevitably lead to new entry by speculators with no intention of building out new networks.”¹¹ In a similar vein, Telus states that a spectrum set-aside will “increase the likelihood of licence trafficking.”¹²

22. Cogeco would re-iterate that it is disingenuous for the incumbent wireless carriers to argue that Industry Canada should sit back and do nothing to encourage entry into the Canadian wireless market because there is ‘enough’ competition and that some financial analysts have decreed that the financial prospects for any new entrant are ‘low’. It is clear from the comments which have been filed that there is considerable interest in this spectrum from a variety of experienced telecommunications companies in Canada. Surely if they feel the risk of embarking on the road to construct a fourth national wireless carrier, or a series of regional carriers, then Industry Canada should do all it can to encourage entry into this market.

23. Furthermore, Cogeco would recommend that Industry Canada reject any argument where it is suggested that the sole intention of any potential new bidder for spectrum is to acquire it for the purpose of ‘flipping’ it for profit at a later date. Such arguments impinge on the legitimate

⁹ Rogers Submission, page 46.

¹⁰ Telus Submission, page 54.

¹¹ Rogers Submission, page 47.

¹² Telus Submission, page 63.

business intentions and concerns that have been expressed in comments filed in this proceeding as well as attacking the integrity of business enterprises that wish to expand their service offerings and offer competing services to Canadian consumers.

1.5 Spectrum Aggregation

24. Cogeco demonstrated in its May 25th comments to Industry Canada that the incumbent wireless carriers have sufficient spectrum in which to offer their current services, and advanced wireless services, for some time to come. Mobilexchange Ltd. has also demonstrated in its comments that the incumbent wireless carriers have sufficient spectrum in order to continue the development of new wireless services. "(...) the Canadian wireless carriers do not presently need, and will not need in the foreseeable future, any additional spectrum to further their growth, increase Canadian penetration and introduce further mobile broadband applications and services."¹³
25. Mobilexchange makes this conclusion from an analysis conducted by LYA of spectrum holdings of Canadian wireless companies versus those in the United States. They observe that, prior to any spectrum acquired as a result of the AWS spectrum auction, the Canadian incumbent wireless carriers have more spectrum capacity licensed per carrier compared to their US counterparts. In addition, they note that the US market is characterized by denser and larger urban areas served by US carriers with less total spectrum than their Canadian counterparts. Further, there is more facilities-based competition in the United States - typically three carriers per market in Canada versus 5 to 7 per market in the US.¹⁴
26. The LYA report done for Mobilexchange Ltd. validates the assessment made by Cogeco as to the extent of the Canadian incumbent wireless

¹³ Comments by Mobilexchange Ltd., page 17.

¹⁴ Canadian and US Mobile Spectrum Holdings, Lemay-Yates Associates Inc., Report Prepared for Mobilexchange Ltd., Page 12.

carriers' current spectrum holdings. Given this, Cogeco would continue to recommend to Industry Canada that the incumbent wireless carriers be restricted to being able to bid for no more than 20 MHz of spectrum in any one market within the core spectrum band.

1.6 Mandatory Roaming

27. The three incumbent wireless carriers all make arguments that mandated roaming should not be allowed. Bell Canada and Rogers sing from the same song book when they state that permitting mandated roaming would not encourage the construction of competing facilities, that a new entrant would be content to ride on the established carrier's network in perpetuity. Bell Canada asks the question openly: "Even if it were technically possible for all carriers to roam on the networks of competing carriers, it would not be good public policy to mandate this result. As noted above, what would prevent new entrants or even a less built-out existing wireless carrier, for example, from riding on the network of the more extensively built-out carrier rather than spending the capital necessary to build out its own facilities-based infrastructure?"¹⁵

28. Rogers is far more explicit in its comments. Describing mandated roaming as the 'antithesis' of facilities-based competition, Rogers goes on to state that "It disincentivizes (*sic*) new investment in facilities outside of major centres and it penalizes carriers who have made this investment by allowing all of their competitors to offer the same footprint without the investment. Rather than encourage facilities-based wireless competition, mandated domestic roaming would sound a death knell for facilities-based competition in Canada."¹⁶

¹⁵ Bell Canada's Response to Specific Questions Raised in the Department's Consultation Paper, page 18.

¹⁶ Rogers Submission, page 52.

29. Both Rogers and Bell Canada assume in their comments that a new entrant would necessarily want to have mandated roaming in perpetuity. Cogeco argued that mandated roaming should be of limited duration, in the neighbourhood of five years. Such a limited duration would permit the new entrant to build a customer base across the country if it so wished, while at the same time engage that company in active construction of its network. There is nothing in the Cogeco proposal that would 'disincent' a new entrant from building its own facilities and certainly nothing that would 'sound a death knell for facilities-based competition in Canada.' As a result, Cogeco recommends that Industry Canada implement mandated roaming for a period of five years.

2 Conclusion

30. It is clear from the number, and quality, of all the submissions received by Industry Canada on this important topic that access to spectrum of the kind subject to this auction process is important for a large number of telecommunications, cable and other providers of communications and broadband services in Canada. The incumbent wireless carriers have tried to show Industry Canada that they are doing a good job, that the wireless market in Canada is competitive, that they are the rightful stewards to the valuable public resource of radio spectrum which is the subject of the upcoming auction.
31. However, Cogeco would submit that they have failed to demonstrate such qualities by the nature of the arguments they have employed. They have tried to demonstrate that the market is as competitive as it could be, that entry by another player in the wireless market is untenable and unnecessary, that the companies filing comments in this process are somehow duplicitous in nature and would do nothing more with the spectrum that hoard it for later sale at a profit and further, that they received no assistance whatsoever from Industry Canada in getting a leg up in developing their wireless businesses.
32. Cogeco would submit that there is ample material on the record to date to demonstrate that the measures it has recommended - mandatory roaming for a period of five years, a spectrum set aside, spectrum aggregation limits on the incumbent wireless carriers and mandated tower and site sharing - are necessary elements to inject more competition into a moribund wireless market in Canada.

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